



# FEDERALISM IN INDIA – ANALYSIS OF THE INDIAN CONSTITUTION

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## I. INTRODUCTION:

It would not be a wrong statement that, in India, the concept federalism is a historical advancement. The configuration with regard to federalism specifically with regard to existing constitution and its tangible operations can be grasped only on the broad canvas of its long expedition. The whole concept of federalism in India can be held in a twofold modus: one is history of federalism in India and other one the federal scheme under the existing constitution of India. The history of Federalism in India and the Federal Scheme under the present-day Constitution of India. The term "federal" is derived from the Latin *foedus*, which means, "covenant". This embodies ideas of promise, obligation, and undertaking; and consequently, the federal idea draws on collaboration, reciprocity, and mutuality. Federalism is a method of segregating powers so that the central and local governments are each within a domain, harmonizing and autonomous. To be lucid, federalism postulates a constitutional apparatus for bringing unity in diversity by toning the divergent forces of centripetal and centrifugal trends in the country for the attainment of conjoint national targets.<sup>1</sup>

As far as definition is concerned Federalism constitutes a complex governmental mechanism for the governance of a country. It binds into one political union several autonomous, distinct, separate and disparate entities or administrative units. It seeks to draw a balance between the forces working in favour of concentration of power at a central point and the forces which favour a dispersal of the power in a number of units.<sup>2</sup> One of the classic definition given by K.C. Wheare on federalism that, it is a federal principle as the method of dividing powers so that the general and regional governments are each within a sphere coordinate and independent.<sup>3</sup> Again the same was redefined by A.V. Dicey, he recognized the three important distinctiveness of a "completely developed federalism" which includes the distribution of powers among governmental bodies, along with the supremacy of the constitution and the authority of the courts as the interpreters of the constitution.<sup>4</sup>

In the modern period, the Constitution of the United States of America, of 1787, is treated as the first experiment in establishing a federal system of government. Subsequently, federalism as a mode of political organization was embodied in the Constitutions of Switzerland, the Dominion of Canada and the Commonwealth of Australia and India.

## II. EVOLUTION OF FEDERALISM:

The Constitution of India establishes a federal structure to the Indian government, declaring it to be a "Union of States". Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the Central government and the States of India. The legislative powers are categorized under a Union List, a State List and a Concurrent List, representing, respectively, the powers conferred upon the Union government, those conferred upon the State governments and powers shared among them.<sup>5</sup>

In 321 and 185 BC, for the first time it is found that many number of kingdoms and republics were assimilated by the Mauryan rulers in Magadha.<sup>6</sup> Further, it may be identified as the first sub-continental state in Indian history India.<sup>7</sup> It would not be wrong to say that, the Mughals, specifically Sher Shah's land revenue system and further, Akbar's division of his empire into 12 Subahs or Provinces provide excellent examples of a federal government.<sup>8</sup>

A vital feature is the division of power between the central government and the constituent units under a constitutional scheme that cannot be changed legally by an ordinary method of central legislation. It is also essential that the arrangement assures the ability of the central government to carry out its purposes within the scope of its authority over the whole area. Hence in a federation, we find:

- Two sets of government constitutionally coordinate
- Division of powers between center and units.
- A federal court as a guardian of the constitution; and
- Supremacy of the constitution which is rigid.

As far as India is concerned, the traces of present federal system found out in the Simon Report and it would not go wrong to mention here that, this report actually supported the very basic idea of federalism in India. Again, the same was affirmed in the First Round Table Conference of 1930.<sup>9</sup> Later, after third round table the idea was flopped literally, in the mean while the British Government issued a white paper in March 1933. As a result of this it became ultimately the basis for the Government of India Act. The significance of the Act of 1935 lies in the fact that the provinces were endowed with a legal personality under a national scheme, and that the character of the national scheme was ultimately a federal system. This meant the abolition of the principle of dyarchy at the provincial level and its retention at the Centre.<sup>10</sup>

## III. FEDERAL FEATURES OF INDIAN CONSTITUTION<sup>11</sup>:

- *Dual polity*: Dual polity consisting of the Union at the Centre and the states at the Periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.
- *Written constitution*: written and lengthiest constitution of the world.
- *Division of powers*: powers are divided into three lists i.e. union, state and concurrent. So the clear demarcation between their respective powers can be clearly seen.
- *Supremacy of constitution*: constitution is regarded as the supreme document and no law can override the specific provision written in the constitution.
- *Rigid constitution*: Provisions which are concerned with the federal structure (i.e., Centre-state relations and judicial organization) can be amended only by the joint action of the Central and state governments.
- *Independent judiciary*: independent judiciary headed by the Supreme Court enjoys different kinds of jurisdictions.
- *Bicameralism*: The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole.

## IV. JUDICIAL CHARACTER OF FEDERALISM IN INDIA:

It was well known facts that, there were a lot of attempts have been made by the politicians, legal practitioners to present their aspects of federalism so the same attempt has also been made by the judiciary. The Indian judiciary has time and again heard a number of cases involving the issue of the federal character of the Indian constitution. So there are many cases where the court tried to define the nature of constitution. Some of them are discussed below:

### *State of West Bengal v. Union of India*<sup>12</sup> (West Bengal case):

This case was popularly called as West Bengal Case; this was one of the first cases on federalism. It was clearly stated by the court that although the Union and States in India derive powers from the same Constitution, the States would have no legal rights as against the overriding powers of the Union, because of a general theory of paramountcy or superiority of the Union. Further, the court opined that, The Constitution of India is not truly Federal in character. The basis of the distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union.

### *State of Rajasthan v. Union of India* (Rajasthan case)<sup>13</sup>:

This case was popularly known as Rajasthan Case, in this case it was held that, if at all this concept was tried to understand in one particular sense, then, the Indian Union is federal. But the extent of federalism in it is largely watered-down by the needs of progress and development of the country which has to be nationally integrated, politically and economically co-ordinated and socially, intellectually and spiritually uplifted. With such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government. So that the very validity and the very

importance of the federal structure during that time can be understood.

But it is to be noted that the referred cases above were the good examples that the court has tried to interpret the nature of the constitution of India in the unitary manner but later in many cases where the court has itself tried to uphold the state autonomy.

#### ***State of Karnataka v. Union of India*<sup>14</sup>:**

In this case, it was held that The Indian Constitution is not federal in character but has been characterized as quasi-federal in nature. Even though the executive and legislative functions of the Centre and the States have been defined and distributed, there runs through it all a thread or rein in the hands of the Centre in both the fields.

The same was highlighted or pronounced in the case, which is the very source of the basic structure, in other words it may be said that the landmark case of *Keshavanad Bharati v. State of Kerala*<sup>15</sup>, further, it was held that the, federalism is one of the part of the basic structure of the constitution, in other words which cannot be amended or removed.

#### ***Kesavananda Bharati v. State of Kerala*<sup>16</sup>:**

Some of the judges, in this case, held federalism to be a part of the basic structure of the constitution which means it can't be tampered with.

#### ***S.R. Bommai v. Union of India*<sup>17</sup>:**

It is very interesting fact to note that, in country like India, we will find few cases, where one can find different opinions of judges regarding the same issue. But surprisingly this case proved as a land mark example, where four different judges given their opinion differently on the concept of federalism. They are discussed in brief.

1. *Justice Ahmadi*: Because of no mention of words like 'federal' he declared it to be a quasi-federal constitution.
2. *Justice Sawant & Kuldeep Singh*: Federalism is an essential feature of the constitution.
3. *Justice Ramaswamy*: Declared India to be an Organic Federation designed to suit the needs of the parliament.
4. *Justice Jeevan Reddy and Justice Agarwal*: Federalism in the constitution has a different meaning in accordance with the context. This case posed restrictions on the arbitrary use of article 356.[26]

### **V. CHALLENGES TO FEDERAL CHARACTER OF INDIA:**

With regard to challenges, India's federal concept has gone through over the past few decades, many trials and troubles, namely,

- Centralized Planning;
- Language Conflicts;
- Issue of Religion;
- Relative Economic and Fiscal Incompatibilities among the Units;
- Physical Environment;
- External Forces and Challenges from Globalization, etc..

#### **The recent three incidences<sup>18</sup> are:**

- Formation of Telangana under Article 3 of the constitution raised a lot of questions against the federal nature of the polity.
- 100<sup>th</sup> amendment of the constitution where land was transferred to Bangladesh has posed as a serious threat to federalism in India.
- Introduction of Goods & Services Tax is a moot point. Whereas the supporters of GST argue that states too should levy taxes under it, the naysayers argue on the autonomy of states.

### **VI. CONCLUSION:**

It would not wrong to say that, federalism or federal form of government is the most suitable form for a vast and pluralistic country like India. It tries to ease the socio-political cooperation between two sets of identities through various structural mechanisms. However, due to because of various factors of factors centre-state relations and the state autonomy, become the prime issues of the Indian federalism. The Sarkaria Commission in 1983 appointed by the Government of India to examine and review the working of the Indian Federalism did not make any useful recommendations for structuring the Indian federalism in a proper manner. There is need for restructuring Indian Federalism to make it more viable and resilient in paving the way for promoting effective relation and perpetuating a federal tradition across the country. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different

States for convenience of administration, the country is one integral whole, its people a single people living under a single emporium derived from a single source. Today, India's political institutions are widely recognized as federal species.

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